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COURT OF APPEALS
DIVISION II

2013 JAN 14 AM 9:27

STATE OF WASHINGTON

NO. 43020-7-II

BY Scotty

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

EMMETT ARTHUR MEADOWS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable John R. Hickman

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. MEADOWS'S CONVICTION OF DOMESTIC
VIOLENCE COURT ORDER VIOLATION AS
CHARGED IN COUNT VII MUST BE
REVERSED AND DISMISSED.

First and foremost, the State misstates the record, claiming that "the jury found defendant guilty of six counts of violation of a domestic violence court order, guilty of one count of violation of a court order. . . ." Brief of Respondent at 2. The record establishes that the jury found Meadows guilty of seven counts of violation of a domestic violence court order as charged in counts I, II, III, IV, V, VI, and VII. CP 114, 116, 118, 120, 122, 124, 127; RP 492-94.

Based on its misreading of the record, the State argues that it "clearly provided enough evidence to convict defendant of count VII violation of a court order. Brief of Respondent at 7. However, the record reflects that the State charged Meadows with "domestic violence court order violation" in count VII, alleging that Meadows violated the court order by willfully having contact with D.G. thereby increasing the classification of the crime to a domestic violence incident. CP 18-19. The jury found Meadows guilty of the crime of "Domestic Violence Court Order Violation as charged in Count VII." CP 127.

“Domestic violence” crimes are crimes committed by one family or household member against another. RCW 10.99.020(5). “Family or household members” is defined under RCW 26.50.010(2). The record substantiates that Meadows had no “biological or legal parent-child relationship” with D.G. as required under RCW 26.50.010(2). RP 124, 126, 184, 187-88, 275.

Consequently, count VII must be reversed and dismissed because the State failed to prove beyond a reasonable doubt that Meadows committed the crime of domestic violence court order violation.

2. A REMAND IS REQUIRED BECAUSE THE
TRIAL COURT MADE SEVERAL
SENTENCING ERRORS.

The State argues that “the record reflects evidence that substance abuse was indeed related to defendant’s crimes. This includes defendant assaulting Ms. Landree in the presence of D.G. while defendant was coming off of drugs.” Brief of Respondent at 10-11. To the contrary, the State’s citations to Landree’s testimony fail to show that substance abuse related to the crime of violating a court order. Landree never blamed drugs as the cause of the court order violations. Importantly, although Landree claimed that Meadows grabbed her by the throat and slapped her, the jury did not find that Meadows assaulted her. CP 126 (Special Verdict Form VIA). Furthermore, no presentence investigation was conducted

and the trial court ordered a substance abuse assessment without finding that Meadows had a substance abuse dependency that contributed to the domestic violence court order violations. 5RP 519.

The State attempts to distinguish State v. Jones, 118 Wn. App. 199, 76 P.3d 258 (2003) in arguing that “defendant has a substance abuse problem and was under the influence of drugs when he committed his crimes. These community custody conditions were necessary to reduce the potential risk to community custody.” Brief of Respondent at 10-11. In Jones, he pled guilty to first degree burglary and other crimes. Id. at 202. The trial court ordered alcohol counseling without any evidence that alcohol contributed to the offenses. Id. at 207. In concluding that the trial court erred, this Court held that “alcohol counseling ‘reasonably relates’ to the offenders’s risk of reoffending, and to the safety of the community, only if the evidence shows that alcohol contributed to the offense.” Id. at 208.

Contrary to the State’s conclusory argument, as in Jones, there was no evidence that substance abuse contributed to the court order violations and consequently substance abuse treatment does not reasonably relate to Meadows’s risk of reoffending and to the safety of the community. A remand is required for the trial court to strike the condition that it had no authority to impose.

As conceded by the State, a remand is required for the court to also amend the community custody term or resentence Meadows in accordance with RCW 9.94A.701(9), and to correct the clerical error in the judgment and sentence which prohibits Meadows from having contact with Landree and D.G. where the court explicitly refused to enter a no-contact order. CrR 7.8(a); State v. Davis, 160 Wn. App. 417, 478, 248 P.3d 121 (2011).

B. CONCLUSION

For the reasons stated here and in appellant's opening brief, this Court should reverse and dismiss Meadows's conviction of domestic violence court order violation as charged in count VII and remand to the trial court.

DATED this 11th day of January, 2013.

Respectfully submitted,


VALERIE MARUSHIGE

WSBA No. 25851

Attorney for Appellant, Emmett Arthur Meadows

DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Avenue, Tacoma, Washington 98402.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 11th day of January, 2013 in Kent, Washington.


VALERIE MARUSHIGE

Attorney at Law
WSBA No. 25851

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